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2                   **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3                   **WESTERN DISTRICT OF MISSOURI**  
                  **SOUTHERN DIVISION**

4 **UNITED STATES OF AMERICA,**            ) **Case No. 16-03092-01-CR-S-RK**  
  )   
5                   **Plaintiff,**            ) **Springfield, Missouri**  
  ) **September 21, 2017**  
6 **v.**                                        )   
  )   
7 **ALBERTO COLINA, JR.,**                )   
  )   
8                   **Defendant.**            )   
  )   
9 \_\_\_\_\_)

10                   **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**  
11                   **BEFORE THE HONORABLE DAVID P. RUSH**  
                  **UNITED STATES MAGISTRATE JUDGE**

12 **APPEARANCES:**

13 For the Plaintiff:                    Ms. Ami Harshad Miller  
  Assistant United States Attorney  
14                                        901 St. Louis St., Ste. 500  
  Springfield, MO 65806  
  (417) 831-4406

15 For the Defendant:                   Ms. Ann M. Koszuth  
16                                        Federal Public Defender's Office  
  901 St. Louis St., Ste. 800  
17                                        Springfield, MO 65806  
  (417) 873-9022

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25 Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

(Court in Session at 9:58 a.m.)

THE COURT: Calling in *United States vs. Alberto Colina, Jr.* The defendant appears in person along with his counsel, Ms. Ann Koszuth. The United States appears by Assistant United States Attorney, Ms. Ami Miller. This matter is set this morning for a change of plea to both counts of the Indictment returned against this defendant on August 23<sup>rd</sup> of 2016. Mr. Colina, you have signed a consent to have these proceedings for a plea of guilty before a Magistrate Judge, with the understanding that a United States District Judge, a judge of higher jurisdiction, will keep your case for acceptance of the plea of guilty and sentencing. Even though you signed this consent you have a right, if you wish, to appear before a United States District Judge, a judge of higher jurisdiction, for these proceedings. At any appearance before the District Judge, you're presumed innocent until such time, if ever, as the United States establishes your guilt beyond a reasonable doubt to the satisfaction of the judge or jury. You always have a right to be present and to confront and cross-examine witnesses. You have a right to use the power of the court to subpoena evidence on your behalf and you have a right to testify or not testify as you would choose. And if you chose not to testify it would not be held against you as that is your right. If, after understanding the charges against you, the range of punishment, if convicted, and your right to appear before a District Judge, if you wish,

1 you may waive or give up that right and proceed this morning  
2 before the Magistrate Judge. As I indicated, you have signed  
3 such a consent. Do you understand that you have a right to  
4 appear before a United States District Judge, a judge of higher  
5 jurisdiction, for these proceedings?

6 MR. COLINA: Yes.

7 THE COURT: And is it your desire to give up that right  
8 and proceed this morning before the Magistrate Judge?

9 MR. COLINA: Yes.

10 THE COURT: Do you understand the charge against you in  
11 Count One of the Indictment in this case?

12 MR. COLINA: Yes.

13 THE COURT: Do you understand that if convicted of the  
14 charge in Count One, that the maximum penalty the court may  
15 impose is not more than 10 years imprisonment, not more than a  
16 \$250,000 fine, not more than three years supervised release, and  
17 a \$100 mandatory special assessment?

18 MR. COLINA: Yes.

19 THE COURT: To the charge in Count One, how do you wish  
20 to plead, guilty or not guilty?

21 MR. COLINA: Guilty.

22 THE COURT: Do you understand the charge against you in  
23 Count Two of the Indictment in this case?

24 MR. COLINA: Yes.

25 THE COURT: Do you understand that if convicted of the

1 charge in Count Two, that again the maximum penalty the court may  
2 impose is not more than 10 years imprisonment, not more than a  
3 \$250,000 fine, not more than three years supervised release, and  
4 a \$100 mandatory special assessment?

5 MR. COLINA: Yes.

6 THE COURT: To the charge in Count Two, how do you wish  
7 to plead, guilty or not guilty?

8 MR. COLINA: Guilty.

9 THE COURT: Would you please raise your right hand?  
10 Your right hand, sir.

11 ALBERTO COLINA, JR., DEFENDANT, SWORN

12 THE COURT: Has anyone made any threat of any kind to  
13 force you to plead guilty or to give up any of the other rights  
14 we've discussed this morning?

15 MR. COLINA: No.

16 THE COURT: Has anyone promised you anything to induce  
17 you or overcome your will to get you to plead guilty or give up  
18 any of the other rights we've discussed?

19 MR. COLINA: No.

20 THE COURT: I mentioned to you that there was a  
21 supervised release term of not more than three years that could  
22 be imposed in your case as to both Counts One and Two. Do you  
23 understand that if that terms were imposed and then revoked for  
24 any reason, that you could be required to serve an additional  
25 term of imprisonment of not more than two years as to both Counts

1 One and Two, and if that happened, you would receive no credit  
2 for any other time you had spent either in custody or on release?

3 MR. COLINA: Yes.

4 THE COURT: Do you understand that the Court could then  
5 impose an additional term of supervised release as to both Counts  
6 One and Two, which is governed by the maximum of the statute,  
7 minus any time you'd spent in custody as a result of a violation?

8 MR. COLINA: Yes.

9 THE COURT: Do you understand that from a sentence  
10 imposed in your case that there is no parole?

11 MR. COLINA: Yes.

12 THE COURT: Do you understand that there are Sentencing  
13 Guidelines to which the District Court would refer to in an  
14 advisory capacity when attempting to fashion a reasonable  
15 sentence in your case?

16 MR. COLINA: Yes.

17 THE COURT: Have you discussed the guidelines with Ms.  
18 Koszuth?

19 MR. COLINA: Yes.

20 THE COURT: And do you understand them?

21 MR. COLINA: Yes.

22 THE COURT: Do you understand that the final decision as  
23 to how the guidelines are calculated and ultimately what sentence  
24 will be imposed rests with the District Judge?

25 MR. COLINA: Yes.

1 THE COURT: If the District Judge would calculate the  
2 guidelines differently from what you've discussed with your  
3 attorney, that fact would not give you the right to withdraw or  
4 change your plea of guilty. Do you understand that?

5 MR. COLINA: Yes.

6 THE COURT: Once the District Judge establishes the  
7 advisory guideline range, in some circumstances, you could be  
8 sentenced above that range and, in other circumstances, you could  
9 be sentenced below that range. And again, the judge's decision,  
10 if you disagreed, would not give you the right to withdraw your  
11 plea of guilty. Do you understand that?

12 MR. COLINA: Yes.

13 THE COURT: Now, Mr. Colina, you have a right to a trial  
14 by jury with all the protections that I explained to you at the  
15 beginning of these proceedings. Do you understand your right to  
16 a trial by jury?

17 MR. COLINA: Yes.

18 THE COURT: And do you understand that if the court  
19 accepts your pleas of guilty that there won't be a trial?

20 MR. COLINA: Yes.

21 THE COURT: Now, I'm going to ask you about the offenses  
22 charged in Counts One and Two of the Indictment. I would remind  
23 you that you are under oath. You must answer truthfully. Any  
24 false answers could result in charges of false swearing or  
25 perjury. You always have the right to remain silent. And I want

1 you to listen carefully because in just a moment I'm going to ask  
2 the attorney for the United States to state for the record the  
3 evidence that she believes that she could present at trial to  
4 prove or establish your guilt beyond a reasonable doubt as to  
5 both Counts One and Two. After the attorney for the Government  
6 is finished, I'm going to ask if you, in fact, did the things  
7 that she's stated for the record that she believes she can prove  
8 beyond a reasonable doubt. Ms. Miller?

9 MS. MILLER: Thank you, Your Honor. If this case were  
10 to go to trial, the Government could prove beyond a reasonable  
11 doubt that on January 6<sup>th</sup>, 2016, Branson Police Department  
12 Officer Joe Edwards was dispatched to an apartment in Branson,  
13 Missouri, a location in the Western District of Missouri.  
14 Officer Edwards made contact with E.R. who had blood on her head  
15 and face. E.R. had a laceration to the back of her head and was  
16 transported to the Cox Medical Center in Branson, Missouri, for  
17 treatment. At the hospital, Detective Arnett made contact with  
18 E.R. E.R. stated a white male pushed his way into her apartment.  
19 E.R. stated that the white male, who was later identified as the  
20 defendant, stole her Glock 19 semi-automatic .9mm pistol. On  
21 January 7<sup>th</sup>, 2016, Greene County Deputy Stephen Percy was  
22 dispatched to the Evergreen Church located at 3225 North Farm  
23 Road 123, Greene County, Missouri, in reference to a burglary. A  
24 search of the church was conducted and the defendant was located  
25 inside the church. A Glock 19 semi-automatic .9mm pistol was

1 located in the same room that the defendant was found in. ATF  
2 Task Force Officer Robert James conducted a function test on the  
3 Glock Model 19 .9mm handgun, Serial Number AARR805 and found it  
4 to function as designed. ATF Special Agent Brian Fox determined  
5 the firearm was manufactured outside the state of Missouri and it  
6 would have had to cross state lines to enter. And that would be  
7 the Government's evidence. Thank you, Your Honor.

8 THE COURT: And I may have missed this, Ms. Miller, but  
9 was the firearm test-fired and did it function as designed? You  
10 may have indicated that.

11 MS. MILLER: Yes, Your Honor. ATF TFO Robert James  
12 conducted a function test and found it to function as designed.

13 THE COURT: All right. Thank you. And the only other  
14 thing, Mr. Colina, I would ask you, did you, in fact, do the  
15 things that the Government has stated for the record and  
16 specifically on January 7<sup>th</sup> of 2016, did you possess the firearm  
17 that she's referenced?

18 MR. COLINA: Yes.

19 THE COURT: Ms. Koszuth, you've looked and reviewed --  
20 you've looked at the Government's file and reviewed the discovery  
21 in this case, have you not?

22 MS. KOSZUTH: Yes, Your Honor.

23 THE COURT: And based upon your review, are you  
24 satisfied, if put to proof, that the United States could make a  
25 submissible case as to all the elements pertaining to Counts One



1 and Two of the Indictment?

2 MS. KOSZUTH: Yes, Your Honor.

3 THE COURT: There is an adequate factual basis for the  
4 pleas of guilty to Counts One and Two. I find that the plea is  
5 voluntary and did not result from force, threats or promises.  
6 Mr. Colina, you are represented -- (clearing throat) excuse me --  
7 in this case by Ms. Koszuth. Have you had enough time to talk  
8 with her about your case?

9 MR. COLINA: Yes.

10 THE COURT: Are you satisfied with the advice that she's  
11 given you?

12 MR. COLINA: Yes.

13 THE COURT: The law requires me to ask you if this  
14 morning you are on any medication prescribed by a physician or  
15 any drugs or alcohol of any kind which would affect your ability  
16 to understand these proceedings?

17 MR. COLINA: No.

18 THE COURT: Understanding that and the other matters  
19 that we've discussed this morning, is it your desire for the  
20 court to accept these pleas of guilty?

21 MR. COLINA: Yes, sir.

22 THE COURT: Ms. Miller, on behalf of the United States,  
23 do you have any other record under Rule 11 that you think I need  
24 to make?

25 MS. MILLER: No, Your Honor.

1 THE COURT: Ms. Koszuth, on behalf of the defendant, do  
2 you have any other record under Rule 11 that you think I need to  
3 make?

4 MS. KOSZUTH: No, Your Honor.

5 THE COURT: I will recommend the pleas of guilty be  
6 accepted and I will order a Presentence Investigation to be  
7 performed -- conducted by the Probation Office. Mr. Colina, good  
8 luck to you, sir. With that, we'll be in recess.

9 MR. COLINA: Thank you.

10 (Court Adjourned at 10:08 a.m.)  
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4 I certify that the foregoing is a correct transcript  
5 from the electronic sound recording of the proceeding in the  
6 above-entitled matter.

7  
8 /s/ Lissa C. Whittaker  
Signature of transcriber

September 22, 2017  
Date